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THE POWERS AND IMPORTANCE OF THE MAGIS- TRATES' COURT¹

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THE importance of the magistrates' courts in this city has been very generally underestimated by reason of the fact that the cases in which they have the power to determine the guilt of defendants and to pronounce sentence involve offenses of a minor character. A consideration of the number and character of the cases brought before these courts and the intimate relations that the questions there considered bear to the development of civic virtue and enjoyment of civic life will show how erroneous is this estimate.

In this paper I shall consider the importance of the magistrates' courts of the first division, which comprise those of the boroughs of Manhattan and the Bronx, rather than those of the entire city, because the greater part of the business of the entire city is transacted in this division, and also because the greater volume of business has made possible a division and specialization of the courts here that does not exist in the other boroughs.

The law secures to a man accused of an offense an early opportunity for a judicial investigation, and therefore requires that a defendant, when arrested, must in all cases be taken before a magistrate without unnecessary delay that he may be dealt with according to law. Thus the magistrates' court becomes the court of first instance for all grades of criminal offenses. In cases of felony or misdemeanor the magistrate must immediately inform the defendant of the charge against him and his right to counsel, and must grant sufficient time to send for counsel. Witnesses must be examined in the presence of the defendant and may be cross-examined in his behalf. The defendant may make a statement, if he desires, but the magistrate must inform

¹ Read at the Conference on the Reform of the Criminal Law and Procedure, May 12, 1911.

him that his refusal to do so cannot be used against him. The accused person also has the right to produce witnesses, who must be sworn and examined. If it appears from this examination that a crime has been committed and that there is sufficient cause to believe the defendant guilty thereof, the magistrate orders him to be either committed or held in bail to answer the charge, if it be one of felony or criminal libel, on indictment by the grand jury either in the supreme court or in the court of general sessions of the peace; if it be one of misdemeanor, for trial in the court of special sessions. If, however, it appears from the examination either that a crime has not been committed, or that there is no sufficient cause to believe the defendant guilty thereof, the magistrate must order his discharge. This is not necessarily the final disposition of the matter, for the district attorney may, notwithstanding the decision of the magistrate, submit the evidence to the grand jury for its action, in felony cases, and in the event of an indictment the defendant is arrested and tried in the higher court for the offense. In cases of misdemeanor, other than criminal libel, the magistrate, within five days after discharging or holding the defendant, must return to the district attorney a statement of the name and address of the defendant, the crime charged, the name and address of the informant, and the names and addresses of all witnesses who were subpoenaed or sworn upon the examination, or who made depositions in support of the information. The district attorney may then either make and file with the clerk of special sessions an information against the defendant, upon which he will be arrested and tried, or may move in that court for the dismissal of the prosecution of the action.

If the charge is a violation of a law or ordinance not classified as a felony or misdemeanor, the magistrate has summary power and jurisdiction to try the case, determine guilt, and sentence accordingly. These offenses comprise charges of disorderly conduct, public intoxication, violation of municipal ordinances, violations of the sanitary code, violations of the sabbath law, vagrancy, insanity, and disorderly conduct.

During the year 1910, in the magistrates' courts of this division, there were arraigned: for felonies, 10,730 persons; for

misdemeanors, 26,963 persons; for offenses of which the magistrates had summary jurisdiction, 82,761 persons—a total of 118,802 persons arraigned in the eleven magistrates' courts of this division.

These figures are impressive as to the importance of the magistrates' courts, but when we analyze the offenses comprised in the technical classification above mentioned, of which the magistrate has summary jurisdiction, the importance of these courts becomes more manifest. Under the heading of "disorderly conduct" we find: soliciting for purposes of prostitution, fighting in the streets, jostling by pickpockets, disorders arising from strikes, disputes between public hackmen and passengers—in short, anything that tends to a breach of the peace on the public streets. "Public intoxication" means that a person is charged with being intoxicated on the streets or in a public place. To regulate the traffic of the streets, to secure safe and proper buildings, to define and limit the right to use the public thoroughfares, and to secure to the individual the greatest enjoyment of our complex and cosmopolitan existence with the least friction and interference by others, a large number of corporation or municipal ordinances have been adopted, the violations of which are punished in these courts; as are also violations of the sanitary code, which consists of ordinances for protecting and safeguarding the health of the community through proper sanitation and the securing of a healthful food supply.

Of the 82,761 persons arraigned in summary proceedings 77,064 were charged with offenses classified under these four general headings. Thus it becomes manifest that no other courts bear so closely upon the daily affairs of our life. The provisions of law to secure the safety, morality and peace of the streets, the comfort and welfare of the home and the health and happiness of the community are here enforced.

In addition to those charged with these offenses, the social derelict, the flotsam and jetsam of city life, the habitual vagrant, the temporary unfortunate who is out of work and unable to provide for himself, the wayward girl from the street and brothel, the intemperate or inhuman husband and father who

has abandoned or threatened to abandon his family, thus making them liable to become public charges, are all brought here, thus presenting to the magistrate social problems, the solution of which has puzzled the wisdom of ages.

How are we to deal with these unfortunates or undesirables? Punishment alone has been found wholly insufficient. A more adequate and rational treatment is imperatively demanded. What shall it be? Never before has the thought of so many persons been concentrated on the consideration of this question. To the magistrate, with the aid of the probation officer, is given such opportunity of observation and investigation as is possessed by no one else. If he is animated by a desire to undertake the solution of some of these problems, the accomplishment of results of lasting benefit to humanity is possible.

With the habitual vagrant little can be accomplished. Temporary residence in the workhouse during the winter months affords a haven of refuge, eagerly sought and earnestly desired. It is hoped that soon the state will establish farms to which this class can be committed, thus being forced to spend time in useful employment. But with the temporarily unemployed, the magistrate, assisted by the probation officer, coöperating with charitable organizations, can accomplish much good, relieving distress and changing a useless encumbrance into a productive and valuable member of society.

The Commission to Inquire into the Courts of Inferior Criminal Jurisdiction in Cities of the First Class (of which I had the privilege of being chairman), recommended, and there has been established, a night court for women and a domestic-relations court, as branches or parts of the magistrates' courts in this division. It was our hope, by the opportunity thus afforded to study the problems presented, and the concentration of the attention and efforts of those who have the ability and are philanthropically inclined, that much good might be accomplished. To the night court girls gathered from the streets and brothels are brought. With the tragedies that result from the social evil it seems, at first, almost hopeless to cope, but the young girl, taken early in her evil life, through wise and sympathetic assistance and oversight by the probation officer, may be

redeemed. The magistrate who sits night after night in this court can instinctively select these cases from the others. There, under our present system, his ability to accomplish results ends. A fine imposed means greater effort to earn money in the only manner open to the prostitute. A workhouse sentence means degradation. Efforts for reformation should go with punishment or no practical result will be accomplished. An adequate system of identification of the offender has been established, that proper statistics may be kept, showing the frequency of the arrest and the effect of the discipline. From the data thus gathered and from experience and study we look to the magistrate to make suggestions of lasting benefit.

To the domestic-relations court is brought the man who fails to provide for his family. Under the old system the wife was compelled to seek redress in the nearest magistrates' court, where, owing to the volume of criminal business, she could of necessity receive but scant consideration. A patient and adequate inquiry was impossible. A temporary disposition of the case was secured, but no sufficient oversight by the magistrate was possible. Now, however, an unfortunate woman may secure a patient hearing in a court freed from criminal environment. The magistrate, through his probation officer, can make a careful investigation into the life of the family, and can frequently discover the cause of the domestic tragedy, and by wise counsel, appropriate provision for support, and careful supervision by the probation officer, re-establish a happy home from the wreck that came before him.

Of the greatest importance to the community is the indirect influence of these courts. A large number of the residents of our city, the humble, the defenseless, and the ignorant, gain their impressions of American institutions from these courts. If they are denied just treatment, they go from the court with a contempt for the law; but if they are impressed with the fact that this is a government of law, and that no one is so high and powerful as to be beyond the power of the law, and none so low and humble as to be beneath its protection, that fair and even-handed justice is secured to the poor and humble, a respect for our institutions and a love of country is fostered that makes for the development of good friendship.

In the last analysis, the magistrate himself is the one important factor in these most important courts. His opportunity to accomplish a valuable and lasting work for the betterment of society is unlimited. Allow me to quote from the concluding portion of the report to the legislature of the commission to which I have already made reference:

We have pursued our investigations and arrived at our conclusions with an appreciation of the fact that laws alone cannot compel intelligent and conscientious administration. Over and above all in importance is the judge himself, upon whom depends, in greatest measure, the careful and wise disposition of these thousands of cases dealing with people and subjects which touch the city's life at every point.

Trite as the expression may be, we may well repeat that the humble, the defenseless and the ignorant, gain their impressions of American institutions in large degree from these judges and courts, and to them these are the courts of last resort. Whether they shall be convinced that justice is patient and even-handed rests almost entirely upon the treatment they receive from these courts and judges. It is not enough to discharge mechanically, though conscientiously, the daily duty, but the judge should contribute his share to the study and solution of the many complexities of city life in regard to which he has, perhaps, greater opportunity of observation than any other public officer. There should be a spirit of coöperation, a desire to undertake the solution of some of these problems, and we are confident that if this spirit generally animated these judicial officers, they would find a greater tendency on the part of the public to accord to them the respect and confidence which their important and dignified offices and duties should command. It is the hope of the commission that its recommendations, if enacted into law, will be of service to these courts and to the administration of justice. The rest depends upon the judges themselves.

It is exceedingly gratifying to acknowledge that, since the writing of these words, there has been a determined and successful effort to remedy the defects which have been pointed out. To-day the magistrates' court is a dignified judicial tribunal. The dignity and opportunity of the position is realized by most of the magistrates, and they are entitled to an appreciative acknowledgment of the importance to the community of the arduous labor they perform so well.